IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080369 TRIAL NO. B-0704358
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
ERRICH VON MINCY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

This case is before us pursuant to a remand from the Ohio Supreme Court following its decision in *State v. Underwood*.[2] Having permitted the parties to file supplemental briefs, we reconsider defendant-appellant Errich Von Mincy's sole assignment of error.

Von Mincy pleaded guilty to one count of aggravated robbery under R.C. 2911.01(A)(1), two counts of robbery under R.C. 2911.02(A)(2), two counts of kidnapping under R.C. 2905.01(A)(2), one count of failure to comply under R.C. 2921.331(B), and one count of having weapons under a disability under R.C. 2923.13(A)(2). The aggravated-robbery, robbery, and kidnapping counts carried

---

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.
[2] See *State v. Von Mincy*, 124 Ohio St.3d 549, 2010-Ohio 924, 925 N.E.2d 128.

firearm specifications. Von Mincy agreed to an aggregate term of 18 years in prison, which the trial court imposed.

Von Mincy's sole assignment of error is that the trial court erred in imposing sentences for allied offenses of similar import under R.C. 2941.25. He first argues that he was improperly convicted and sentenced for both the aggravated-robbery and the robbery offenses because these crimes were allied offenses of similar import.

The Ohio Supreme Court has held that aggravated robbery and robbery, as defined either in R.C. 2911.01(A)(1) or in R.C. 2911.02(A)(2), are allied offenses of similar import for which a defendant cannot be separately convicted if they are not committed separately or with a separate animus.[3] As alleged in the indictment in this case, the object of the aggravated robbery was a Burbanks restaurant, while the object of the robberies was two women. Because Von Mincy committed separate crimes against the two women and the restaurant, he was properly convicted of the aggravated-robbery and robbery offenses.

Von Mincy next argues that the kidnapping offenses were allied offenses of similar import with the aggravated-robbery and robbery offenses, because the restraint and movement of the two women were merely incidental to the underlying robberies. The Ohio Supreme Court has held that the commission of aggravated robbery and robbery necessarily results in the commission of a kidnapping, and that the crimes are, therefore, allied offenses of similar import for which a defendant cannot be separately convicted unless they are committed with a separate animus.[4]

---

[3] *State v. Harris*, 122 Ohio St.3d 373, 2009-Ohio-3323, 911 N.E.2d 882, syllabus.
[4] *State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1059, 905 N.E.2d 154, syllabus and at ¶22.

In determining whether kidnapping and another offense have been committed with a separate animus, courts must consider the guidelines set forth in *State v. Logan*.[5]

After applying the *Logan* guidelines in this case, we conclude that the kidnappings were committed with an animus separate from those for the aggravated robbery and the robberies. Von Mincy and a co-defendant forced the women back into the restaurant at gunpoint. Once in the restaurant, they forced them into the manager's office and then into a restroom. The asportation at gunpoint was prolonged and of independent significance because there was no need to force the women back into the restaurant to rob it. The women were then marched around the restaurant at gun-point to a much greater extent than was necessary to effectuate the aggravated robbery of the restaurant, and that increased the risk of physical harm to them. As a result, we conclude that Von Mincy was properly convicted of both counts of kidnapping in addition to the aggravated-robbery and robbery counts. We, therefore, overrule his sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on August 18, 2010

per order of the Court _____.

Presiding Judge

---

[5] (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus.